

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL E. JACQUES,
Plaintiff,
v.
M. DOBBS, et al.,
Defendants.

No. 2:24-cv-00478-DJC-EFB (PC)

ORDER

Plaintiff, a state prisoner proceeding without counsel, brought this action pursuant to 42 U.S.C. § 1983 on February 15, 2024. (ECF No. 1.) Plaintiff filed an application to proceed in forma pauperis ("IFP") that same day. (ECF No. 2.)

On March 7, 2025, the Magistrate Judge filed Findings and Recommendations recommending this case be dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(A) because Plaintiff had misrepresented her finances in her IFP application in bad faith. (ECF No. 12.) In particular, the Magistrate Judge found that Plaintiff had failed to disclose deposits made into her prison trust account from outside sources yet "stated under penalty of perjury on her IFP application that she receives no money from any source." (*Id.* at 5.) The Findings and Recommendations contained notice to all Parties that any objections were to be filed within 14 days. (*Id.*) No timely objections were filed. On April 18, 2025, this Court adopted the Findings and Recommendations in

1 full and dismissed the case with prejudice. (ECF No. 13.) Judgment was entered on
2 April 21, 2025. (ECF No. 14.)

3 On April 28, 2025, Plaintiff filed a Motion to Vacate the Court's Order
4 dismissing the case with prejudice. (ECF No. 15.) Plaintiff explained that she could
5 not file timely objections to the Findings and Recommendations as she was denied
6 access to her facility's law library to research her case and was also denied the ability
7 to purchase stamps or envelopes. (*Id.*) Plaintiff also filed belated Objections to the
8 Findings and Recommendations, explaining that any misrepresentations in her IFP
9 application were not made in bad faith because Plaintiff "owed a total amount of
10 \$16,884 in restitution payments" and believed any income she received was eroded
11 by her restitution obligations. (ECF No. 16.) She also stated she had filed prior IFP
12 applications in the same manner without issue. (*Id.*)

13 The Court will construe Plaintiff's Motion to Vacate and accompanying
14 Objections as a Motion for Reconsideration under either Federal Rule of Civil
15 Procedure 59(e) (motion to alter or amend a judgment) or 60(b) (relief from
16 judgment). *See Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). A
17 motion for reconsideration "is treated as a motion to alter or amend judgment under
18 Federal Rule of Civil Procedure Rule 59(e) if it is filed within ten days of the entry of
19 judgment. Otherwise it is treated as a Rule 60(b) motion for relief from judgment or
20 order." *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99
21 (9th Cir. 2001). As Plaintiff's Motion to Vacate and Objections were filed within 10
22 days of the entry of judgment, the Court will analyze them under Rule 59(e).

23 Reconsideration is an extraordinary remedy and, in the interests of finality and
24 conservation of judicial resources, is used sparingly. *Kona Enterprises, Inc. v. Estate of*
25 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Under Rule 59(e), "[r]econsideration is
26 appropriate if the district court (1) is presented with newly discovered evidence,
27 (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is
28 an intervening change in controlling law." *Sch. Dist. No. 1J*, 5 F.3d at 1263. Whether

1 to grant a motion for reconsideration is within the discretion of the district court. See
2 *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 661 (9th Cir. 1999).

3 The Court holds that reconsideration is warranted here. As Plaintiff explains,
4 she owed significant restitution payments which she believed negated any income she
5 received from outside sources and was unfamiliar with the proper method for filling
6 out the IFP application. Given these representations, the Court finds that there is no
7 clear evidence Plaintiff's misrepresentations in her IFP application were made in bad
8 faith. The Court notes that a different Magistrate Judge recently examined Plaintiff's
9 similarly deficient IFP application in another matter before this Court and came to the
10 same conclusion, bolstering this Court's holding. In particular, that Magistrate Judge
11 found that Plaintiff had made misrepresentations in her application concerning
12 deposits into her prison trust account, but credited Plaintiff's explanation that she was
13 unaware of those deposits when she filed the application, thereby declining to find
14 the misrepresentations were made in bad faith. See *Jacques v. Hearn*, 2:23-cv-02714-
15 DJC-SCR (E.D. Cal. Oct. 15, 2024), ECF No. 9 ("The undersigned will accept plaintiff's
16 explanation that plaintiff was not aware of the trust account deposits at issue when
17 [s]he signed the IFP affidavit and constructively filed the complaint. Accepting
18 plaintiff's explanation, the undersigned will not recommend that this case be
19 dismissed for an untrue allegation of poverty.").

20 Thus, given Plaintiff's representations in her Objections, the Court will grant
21 reconsideration and reopen this case. However, for the reasons stated in the Findings
22 and Recommendations, the Court finds that Plaintiff has made an inadequate showing
23 of indigency. Accordingly, Plaintiff must pay the court costs in order to proceed with
24 this case. Plaintiff is cautioned, however, that failure to pay the court costs will result in
25 dismissal of this action without prejudice.

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CONCLUSION

In accordance with the above, it is HEREBY ORDERED:

1. Plaintiff's Motion to Vacate (ECF No. 15) is GRANTED;
2. The Clerk of Court is DIRECTED to reopen this case;
3. Within thirty (30) days of this Order, Plaintiff shall submit the court costs in the amount of \$405 in order to proceed with this action. Failure to pay this filing fee will result in dismissal of this action; and
4. Should Plaintiff pay the filing fee, this action will be referred back the assigned Magistrate Judge for all further pretrial proceedings.

IT IS SO ORDERED.

Dated: **May 21, 2025**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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